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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Salvador Rodriguez-Herrera,

No. CV-23-00512-PHX-DJH

10 Petitioner,

ORDER

11 v.

12 Ryan Thornell, et al.,

13 Respondents.
14

15 Pending before the Court is *pro se* Petitioner Salvador Rodriguez-Herrera's
16 ("Petitioner") Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1)
17 and the Report and Recommendation ("R&R") issued by United States Magistrate Judge
18 Camille D. Bibles (Doc. 11). Magistrate Judge Bibles recommends the Petition be denied
19 for failure to timely file his petition. (*Id.*) The Court has reviewed the Petition, the Limited
20 Response (Doc. 9), the R&R, Petitioner's Objection, originally filed as a "Motion for
21 Summary Judgment" (Doc. 17)¹, Respondents' Response (Doc. 13), and Petitioner's Reply
22 (Doc. 15). The Court adopts Magistrate Judge Bibles's R&R in its entirety.

23 ¹ On October 16, 2023, the Court ordered the Clerk of Court to re-docket Petitioner's
24 "Motion for Summary Judgment" (Doc. 12) as an Objection to the R&R. (Doc. 16).
25 Generally, "[s]ummary judgment procedures are ill-suited to habeas cases." *Fahr v. Shinn*,
26 2021 WL 3666244, at *6 (D. Ariz. 2021). *See also* Rules Governing Section 2254 Cases,
27 Rule 12 ("The Federal Rules of Civil Procedure, to the extent that they are not inconsistent
28 with any statutory provisions or these rules, may be applied to a proceeding under these
rules."); Brian R. Means, Rule 56, Federal Habeas Manual § 8:36 (2018) (discussing the
practical difficulties of applying summary judgment to habeas, particularly involving state
prisoners in § 2254 cases). Though Petitioner moved under Federal Rule of Civil
Procedure 56(a), Petitioner does not establish why the application of summary judgment
standards are appropriate to his Petition or why the motion was filed after the R&R was
issued. The Court accordingly declines to apply Rule 56 standards to the post-R&R filings.

1 **I. Background**

2 Magistrate Judge Bibles did not reach the merits of Petitioner’s Petition because she
 3 found it barred by the statute of limitations provision of the Antiterrorism and Effective
 4 Death Penalty Act (“AEDPA”). AEDPA imposes a one-year limitations period on state
 5 prisoners seeking federal habeas relief. Judge Bibles determined that Petitioner’s
 6 conviction was final on June 23, 2020, and expired on June 23, 2021. (Doc. 11 at 5).
 7 Petitioner filed his federal Petition over a year after this expiration period, on March 21,
 8 2023 (Doc. 1). Judge Bibles further determined that no circumstances justified statutory
 9 or equitable tolling of the limitation statute, and that Petitioner had failed to establish the
 10 existence of any extraordinary circumstances that justified his failure to timely file his
 11 Petition. (Doc. 11 at 6–8).

12 **II. Standard of Review**

13 This Court “may accept, reject, or modify, in whole or in part, the findings or
 14 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). The Court “must
 15 review the magistrate judge’s findings and recommendations *de novo* if objection is made,
 16 but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en
 17 banc). Indeed, the Court is not required to conduct “any review at all. . . of any issue that
 18 is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also* 28
 19 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

20 **III. Discussion**

21 Petitioner’s objections do not address Judge Bibles’ findings of untimeliness.
 22 Instead, Petitioner generally takes issue with the R&R’s recitation of the procedural events
 23 leading to his guilty pleas. (*See* Doc. 12 at 2 (“Petitioner controverts Page Two (lines 1–
 24 28 . . . to clarify the misinterpretations of the (A.A.G.’s) false facts)). He also says he
 25 “controverts Page 5 (lines 1–28) for the simple fact that U.S.C.S. Rule 56(a) clearly states
 26 that a party may move for summary judgment identifying each claim or defense on which
 27 summary judgment is sought.” (*Id.* at 2–3). He conclusively asks the Court to find in his
 28 favor and “grant an evidentiary hearing and a reverse order to the lower court for this matter

1 to be resolved.” (*Id.* at 3).

2 General objections—such as the objections Petitioner makes—have the same effect
3 as a failure to object altogether. *Warling v. Ryan*, 2013 WL 5276367, at *2 (D. Ariz. Sept.
4 19, 2023). As to Petitioner’s objection to “Page Two,” the Court cannot determine which
5 of the factual statements on this page are the objectionable “false facts.” The procedural
6 history recited on page 2 was information that Petitioner’s state-appointed post-conviction
7 counsel included in his Notice of Completion of Post-Conviction Review and finding of
8 no colorable claim. (Doc. 9-1 at 15). Petitioner’s appointed counsel averred that these
9 facts were taken from his review of Petitioner’s trial record, including, among other things,
10 court orders, transcripts, information from Petitioner, and information from Petitioner’s
11 prior counsel. (*See* Doc. 9-1 at 15). The record reflects that though Petitioner was allowed
12 to file a pro per petition, he did not. (*Id.* at 24). As Petitioner has not provided clear and
13 convincing evidence to rebut the presumption of correctness of the facts derived from the
14 state court appellate record, much less identified with the required specificity which facts
15 he contends are untrue, this objection is overruled. *See* 28 U.S.C. § 2254 (e)(1) (“[A]
16 determination of a factual issue made by a State court shall be presumed to be correct. The
17 applicant shall have the burden of rebutting the presumption of correctness by clear and
18 convincing evidence.”).

19 Petitioner’s objection to “Page 5” is even more vague but seems to be objecting to
20 the fact that the Magistrate Judge did not reach the merits of his claims, having determined
21 the Petition was time-barred. But there was no error here: untimely federal petitions for
22 writs of habeas corpus are barred from federal court review. 28 U.S.C.A. § 2244(d). This
23 objection is therefore also overruled.

24 Though under no obligation to do so, the Court has otherwise reviewed the entirety
25 of the R&R and agrees with the conclusions and recommendations made therein.
26 Accordingly, the Court will adopt it as the Order of this Court.

27 **VI. Conclusion**

28 Based on the foregoing,


1 **IT IS ORDERED** that Magistrate Judge Bible's R&R (Doc. 11) is **ACCEPTED**
2 and **ADOPTED**.

3 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus pursuant
4 to 28 U.S.C. § 2254 (Doc. 1) is **DENIED**. Petitioner's Motion for Status Update (Doc. 18)
5 is **DENIED** as moot.

6 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
7 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
8 on appeal is **DENIED** because Petitioner has not made a substantial showing of a denial
9 of a constitutional right and because dismissal of the Petition is justified by plain procedural
10 bars and jurists of reason would not find the procedural rulings debatable.

11 **IT IS FINALLY ORDERED** that the Clerk of Court shall terminate this action and
12 enter judgment accordingly.

13 Dated this 8th day of October, 2024.

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17 Honorable Diane J. Humetewa
18 United States District Judge
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